TAN HOOK KHOON

v.

PP

COURT OF APPEAL, KUALA LUMPUR
DENIS ONG JCA
RAHMAH HUSSAIN JCA
MOHD GHAZALI YUSOFF JCA
[CRIMINAL APPEAL NO: W-09-59-95]
17 APRIL 2003

CRIMINAL PROCEDURE: *Appeal - Petition of appeal - Failure to file - No application for enlargement of time - Whether appeal deemed to have been withdrawn - Courts of Judicature Act 1956, ss. 53, 56 - Rules of the Court of Appeal 1994, O. 65*

The instant appeal was from the decision of the High Court affirming the decision of the Sessions Court convicting the appellant under s. 4 of the Firearms (Increased Penalties) Act 1971 and sentencing him to life imprisonment. Although the record of appeal was admittedly served on the appellant and his advocates on either 24 July 1998 or 7 August 1998, no petition of appeal was filed as at the date of the hearing on 14 and 17 April 2003. There was also no application for an extension of time to file a record of appeal under s. 56 of the Courts of Judicature Act 1956.

Held:
Per Denis Ong JCA

[1] The appeal was deemed to have been withdrawn by virtue of s. 53(3) of the Courts of Judicature Act 1956. (pp 347 g & 348 a)

[Appeal struck out.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Rayuan semasa adalah terhadap keputusan Mahkamah Tinggi yang mengesahkan keputusan Mahkamah Sesyen di mana mahkamah terkemudian tersebut telah mensabitkan perayu di bawah s. 4 Akta Senjatapi (Hukuman Lebih Berat) 1971 dan menghukumnya dengan hukuman penjara seumur hidup. Walaupun rekod rayuan diakui telah diserahkan kepada perayu serta peguamnya sama ada pada 24 Julai 1998 atau 7 Ogos 1998, tiada petisyen

rayuan telah difail sehingga tarikh perbicaraan pada 14 and 17 April 2003. Selanjutnya, tiada permohonan dibuat untuk lanjutan masa bagi memfailkan rekod rayuan di bawah s. 56 Akta Mahkamah-mahkamah Kehakiman 1956.

Diputuskan:
Oleh Denis Ong HMR

[1] Rayuan dianggap sebagai telah ditarik balik mengambilkira s. 53(3) Akta Mahkamah-mahkamah Kehakiman 1956.

Rayuan dibatalkan.]

For the appellant - M/s Gooi & Co
For the respondent - Nurulhuda Nur'aini Mohd Noor DPP

Reported by Gan Peng Chiang

JUDGMENT

Denis Ong JCA:
This appeal appeared as No. 8 in the List of Appeals fixed for disposal on Monday, 14 April 2003 and was based on the chronology of events stated to us by the Court of Appeal registry thus:

(1) the appellant/accused was found guilty by the Sessions Court and sentenced to life imprisonment under s. 4 of the Firearms (Increased Penalties Act 1971.

(2) He was dissatisfied with the conviction and sentence and appealed to the High Court.

(3) The High Court affirmed the sentence and conviction and dismissed the appeal.

(4) Notice of Appeal to the Court of Appeal was filed on 4 December 1995.

(5) The appeal record was served on the appellant/accused and his advocates on 24 July 1998 (in accordance with r. 63 of the Rules of the Court of Appeal 1994) and until fixing, the appellant failed to file the petition of appeal.

Hearing commenced on 14 April 2003. Present in court were the appellant who was serving his sentence of imprisonment in Taiping Prison, his counsel Miss Azura of M/s Gooi & Co. (Advocates & Solicitors) who were officially on record as advocates for the appellant. Nurulhuda Nur'aini Mohd Noor, deputy public prosecutor appeared for the prosecution.

At the outset Miss Azura informed the court that she was not representing the appellant although the notice of hearing was served on her law firm. To a query from the court, she replied that the appeal record of this appeal was still in the possession of her law firm.

Whereupon this court directed Miss Azura to return the appeal record to the appellant in Taiping Prison and also directed the Court of Appeal Registry to serve a fresh notice of hearing on the Director of Prisons, Taiping to have the appellant produced before us again on 17 April 2003 at 11am for the hearing of the appeal to be continued. Until then, hearing was thus adjourned.

When hearing resumed on 17 April 2003 Miss Azura informed the court that the appeal record had been returned to the appellant as directed and the appellant said that he would appoint a new counsel to pursue his appeal. The appellant confirmed to the court that he discharged M/s Gooi & Co. from acting as advocates for him in this appeal and further confirmed that he wanted M/s Paramjit & Co. (Advocates and Solicitors, Perak) to represent him in this appeal.

To a question from the court Miss Azura stated that the appeal record was served on her office on 7 August 1998 and that under the Rules of the Court of Appeal 1994, the petition of appeal should have been filed within ten days of service of the appeal record.

The court noted that the notice of appeal was filed on 4 December 1995 about which there was no dispute. The court further noted that it was a fact not disputed by M/s Gooi & Co. that the appeal record was served on them. The court also noted that there was inconsistency as to the date of service of such appeal record: according to Miss Azura the date was 7 August 1998 but according to the chronology of events, it was stated as 24 July 1998. Whether it was 7 August 1998 or 24 July 1998 the fact remained that until hearing on 14 and 17 April 2003, no petition of appeal

was filed and there was no application for extension of time to do so under s. 56 of the Courts of Judicature Act 1964 before the court. In the premises by operation of s. 53(3) of the same Act, this appeal was deemed to have been withdrawn.

The learned deputy public prosecutor was not called upon to submit.

For these reasons stated, this appeal was struck out and the court ordered accordingly.